

ATTACHMENT 4

AT&T Mobility Contract



Terri L. Hoskins
Senior Attorney

AT&T Services, Inc.
1120 20th Street, N.W.
Suite 1000
Washington, D.C. 20036

202.457.3047 Phone
202.457.3073 Fax
terri.l.hoskins@att.com E-mail

August 1, 2007

By Messenger

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

FILED/ACCEPTED
AUG - 1 2007
Federal Communications Commission
Office of the Secretary

Re: Submission of Contract Pursuant to 47 U.S.C. § 211 and 47 C.F.R. § 43.51

Dear Ms. Dortch:

Pursuant to § 211 (a) of the Communications Act of 1934, as amended, and § 43.51 of the Commission's rules, AT&T hereby files the attached agreement between AT&T-13 State and New Cingular Wireless PCS, LLC. to provide Transit. If you have any questions, please do not hesitate to contact me at (202) 457-3047.

Sincerely,

/s/ Terri L. Hoskins
Senior Counsel
AT&T Services, Inc.

COMMERCIAL AGREEMENT

between

**Illinois Bell Telephone Company d/b/a AT&T Illinois,
Indiana Bell Telephone Company Incorporated d/b/a AT&T
Indiana,**

**Michigan Bell Telephone Company d/b/a AT&T Michigan,
Nevada Bell Telephone Company d/b/a AT&T Nevada,
The Ohio Bell Telephone Company d/b/a AT&T Ohio,
Pacific Bell Telephone Company d/b/a AT&T California,
The Southern New England Telephone Company d/b/a AT&T
Connecticut, Southwestern Bell Telephone Company¹ d/b/a AT&T
Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and/or
AT&T Texas,**

Wisconsin Bell, Inc. d/b/a AT&T Wisconsin

and

New Cingular Wireless PCS, LLC

¹ Name change approval request(s) may be pending with the appropriate state regulatory authorities.

TABLE OF CONTENTS

<u>SECTION</u>	<u>SECTION NUMBER</u>
INTRODUCTION	1
GENERAL DEFINITIONS APPLICABLE TO THE AGREEMENT (INCLUDING THE ATTACHMENTS)	2
PRICING	3
REUSE OF FACILITIES	4
TECHNOLOGY EVOLUTION.....	5
TERMINATION	6
BRANDING	7
FORCE MAJEURE.....	8
GOVERNING LAW.....	9
LIMITATION OF LIABILITY/INDEMNITY.....	10
BILLING AND PAYMENT OF RATES AND CHARGES AND BILLING DISPUTES	11
DISPUTE RESOLUTION.....	12
NONDISCLOSURE	13
PUBLICITY.....	14
ASSIGNMENT.....	15
NOTICES.....	16
THIRD PARTY BENEFICIARIES	17
TAXES.....	18
EFFECTIVE DATE, TERM, EXPIRATION AND TERMINATION.....	19
WAIVER	20
DISCLAIMER OF WARRANTIES	21
RELATIONSHIP OF THE PARTIES	22
FILING OF AGREEMENT; GOVERNMENTAL REQUIREMENT	23
AMENDMENTS AND MODIFICATIONS.....	24
INTERPRETATION/JOINT WORK PRODUCT	25
NO LICENSE.....	26
INTELLECTUAL PROPERTY	27
COMPLIANCE AND CERTIFICATION	28
NETWORK MAINTENANCE AND MANAGEMENT	29
CUSTOMER INQUIRIES/END USER NOTICES.....	30
INSURANCE	31
SEVERABILITY	32
SURVIVAL.....	33
AUTHORITY	34

COUNTERPARTS.....35

ENTIRE AGREEMENT.....36

COMMERCIAL AGREEMENT GENERAL TERMS AND CONDITIONS

This Agreement is entered into by and between New Cingular Wireless PCS, LLC (hereinafter referred to as "CARRIER" or "CLEC") and AT&T-13STATE (as defined herein) (collectively, the "Parties"; each, a "Party").

1. INTRODUCTION

- 1.1 This Agreement sets forth the rates, terms and conditions under which AT&T-13STATE agrees to provide CARRIER certain non-251/252 telecommunications-related products and/or services. The Parties acknowledge and agree that the provisions set forth in this Agreement are not subject to and/or required by the Communications Act of 1934, as amended, ("Act") including without limitation, Sections 251/252 of the Telecommunications Act of 1996 and any regulation or rule of the FCC or any state commission, and are not subject to negotiation and/or arbitration under Section 252 of the Act unless both Parties otherwise voluntarily agree in a writing signed by both Parties. All disputes that arise under this Agreement shall be resolved solely pursuant to the Dispute Resolution provisions of this Agreement.
- 1.2 The products and/or services available under this Agreement are set forth in the following Attachments (which are attached and incorporated herein), and are subject to the provisions of this Agreement. All of the provisions in this Agreement (including all Attachments, appendices, exhibits, schedules, and addenda hereto) are integrally related and non-severable. In the event of any inconsistency or conflict between this Agreement (ignoring the Attachments) and an Attachment, the Attachment shall control but only to the extent of such inconsistency or conflict.
 - 1.2.1 Transit Traffic Service Attachment (Wireless)
- 1.3 This Agreement is applicable to and binding upon both Parties in the states of California, Nevada, Texas, Missouri, Oklahoma, Kansas, Arkansas, Illinois, Wisconsin, Michigan, Indiana, Ohio, and Connecticut, and only applies within the Service Areas (as defined below).
- 1.4 The facilities used by AT&T-13STATE to provide the products and/or services hereunder shall remain the property of AT&T-13STATE.
- 1.5 Except as may be expressly set herein forth or in an attachment hereto (terms in attachments apply to that specific attachment only), the Parties understand and agree that no performance measures and remedies, including without limitation, any wholesale service quality standards, liquidated damages, and remedies, shall apply to the products and/or services under this Agreement. The Parties agree that the products and/or services under this Agreement are not subject to any AT&T-13STATE change management processes (often referred to as "CMP"), except that changes to systems and processes that are common to both the services and/or products hereunder and other AT&T-13STATE offerings that are subject to any change management process, shall continue to be subject to such process.

2. GENERAL DEFINITIONS APPLICABLE TO THE AGREEMENT (INCLUDING THE ATTACHMENTS)

- 2.1 "AT&T CALIFORNIA" means Pacific Bell Telephone Company d/b/a AT&T California (and previously referred to as "SBC California").
- 2.2 "AT&T CONNECTICUT" means The Southern New England Telephone Company d/b/a AT&T Connecticut (and previously referred to as "SBC Connecticut").
- 2.3 "AT&T MIDWEST REGION 5-STATE" means Illinois Bell Telephone Company d/b/a AT&T Illinois, Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana, Michigan Bell Telephone Company d/b/a AT&T Michigan, The Ohio Bell Telephone Company d/b/a AT&T Ohio, and/or Wisconsin Bell, Inc. d/b/a AT&T Wisconsin (and previously referred to as "SBC Midwest Region 5-State").
- 2.4 "AT&T MISSOURI" means Southwestern Bell Telephone Company d/b/a AT&T Missouri (and previously referred to as "SBC Missouri").

- 2.5 "AT&T NEVADA" means Nevada Bell Telephone Company d/b/a AT&T Nevada (and previously referred to as "SBC Nevada").
- 2.6 "AT&T OKLAHOMA" means Southwestern Bell Telephone Company d/b/a AT&T Oklahoma (and previously referred to as "SBC Oklahoma").
- 2.7 "AT&T SOUTHWEST REGION 5-STATE" means Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and/or AT&T Texas in Arkansas, Kansas, Missouri, Oklahoma, and/or Texas, respectively (and previously referred to as "SBC Southwest Region 5-State").
- 2.8 "AT&T-2STATE" means AT&T CALIFORNIA and AT&T NEVADA (and previously referred to as "SBC-2STATE").
- 2.9 "AT&T-8STATE" means AT&T SOUTHWEST REGION 5-STATE, AT&T CALIFORNIA, AT&T NEVADA, and AT&T CONNECTICUT (and previously referred to as "SBC-8STATE").
- 2.10 "AT&T-12STATE" means AT&T-2STATE, AT&T SOUTHWEST REGION 5-STATE, and AT&T MIDWEST REGION 5-STATE (and previously referred to as "SBC-12STATE").
- 2.11 "AT&T-13STATE" means AT&T-2STATE, AT&T SOUTHWEST REGION 5-STATE, AT&T MIDWEST REGION 5-STATE, and AT&T CONNECTICUT (and previously referred to as "SBC-13STATE").
- 2.12 "Act" means the federal Communications Act of 1934, as amended, including without limitation by the federal Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996).
- 2.13 "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this definition, the term "own" means to own an equity interest (or the equivalent thereof) of more than ten (10) percent.
- 2.14 "Business Day" means Monday through Friday, excluding holidays on which the applicable AT&T-13STATE ILEC does not provision new orders for retail telecommunications services. The use of only "day" in this Agreement refers to a calendar day.
- 2.15 "Intellectual Property" means copyrights, patents, trademarks, service marks, trade secrets, mask works and all other intellectual property rights.
- 2.16 "Service Area" means a geographic area in which AT&T-13STATE then serves as the incumbent local exchange carrier.

3. PRICING

- 3.1 The rates which shall apply under this Agreement are set forth in the various pricing schedules to this Agreement, which are incorporated herein by this reference.
- 3.2 Where rates are shown as monthly, a month will be defined as a calendar month. The minimum term for each product and/or service purchased hereunder will be one (1) month. After that initial month, billing will be on the basis of whole or fractional months used.

4. REUSE OF FACILITIES

- 4.1 Each Party will abide by any applicable federal and state laws and regulations in obtaining end user authorization prior to changing an end user customer's provider of services and/or products made available through use of the services and/or products provided under this Agreement or like-services and in assuming responsibility for any charges that may apply to the extent the FCC's rules regarding Subscriber Carrier Selection Changes (47 C.F.R. §§ 64.1100 through 64.1170) or any state regulation applies to the changing of an end user customer's provider of services and/or products made available through use of the services and/or products provided under this Agreement or like-services.
- 4.2 When an end user changes or withdraws authorization from its carrier, each Party shall immediately release end user-specific facilities belonging to or possessed by AT&T-13STATE in accordance with the end user

customer's direction or that of the end user customer's authorized agent. Further, when an end user customer abandons its premise (that is, its place of business or domicile), AT&T-13STATE is free to reclaim the end user-specific facilities, and is free to issue service orders required to reclaim such facilities. In either situation, CARRIER shall promptly provide AT&T-13STATE with all information necessary for AT&T-13STATE to reclaim or reuse the facilities, including, but not limited to the circuit ID of the affected facility.

- 4.3 The Parties agree to the re-use of existing network facilities when a customer (including without limitation an end user customer) changes its provider of service being provided by those existing facilities, and those existing network facilities that are available for use for providing the services and/or products provided under this Agreement.

5. TECHNOLOGY EVOLUTION

- 5.1 Nothing in this Agreement shall constrain or otherwise limit AT&T-13STATE from continuing to evolve and otherwise modify its networks by, for example, deploying new and different technologies and altering the manner in which products and/or services are provided, including without limitation the products and/or services provided for in the Attachments. AT&T-13STATE shall retain the right to deliver those products and/or services, including without limitation local exchange service, over the technologies and in the manner that AT&T-13STATE chooses.

- 5.1.1 AT&T-13STATE shall provide notice prior to evolving or otherwise modifying its networks such that any product, service or other offering provided under this Agreement will no longer be available in a Service Area, or if such product/service/offering will no longer be available when such product/service/offering had been or was being provided even though AT&T-13STATE was not obligated to provide it (in either situation, an "Affected Area"). By way of example only, if AT&T-13STATE is providing AT&T Local Wholesale Complete™ under this Agreement, "Basic Analog Switching Functionality" might become unavailable with the retirement of an existing circuit switch. Such notice shall be provided via the public notice requirements of 47 C.F.R. § 51.325 et seq. or, if not given thereunder, by providing at least 120 days' notice before implementation. CARRIER shall discontinue using such product/service/offering in the Affected Area by the end of such applicable notice period.

6. TERMINATION

- 6.1 Notwithstanding anything to the contrary in this Agreement, upon violation of any conditions governing the furnishing of products and/or services under this Agreement, AT&T-13STATE may, without incurring any liability, discontinue furnishing products and/or services under this Agreement ("termination") upon notice as provided for in Section 16 below. If CARRIER disputes the violation, it shall notify AT&T-13STATE in writing within fourteen (14) days of receipt of notice from AT&T-13STATE and the dispute shall be resolved between the Parties pursuant to Section 11 below (as to billing disputes) and Section 12 below. If CARRIER does not dispute the violation, CARRIER shall correct the violation and notify AT&T-13STATE in writing that the violation has been corrected prior to expiration of the thirty (30) day notice and cure period or as otherwise agreed by the Parties. Following any such termination under this Section 6, neither Party shall have any further obligations under this Agreement (except for those obligations set forth in Sections 19.6 and 19.7 below). In the case of termination, all applicable charges, including without limitation outstanding charges, interest charges, late payment fees and termination charges shall become due. At its option, AT&T-13STATE may net amounts owed by CARRIER against funds which otherwise might be due to CARRIER from AT&T-13STATE under this or any other agreement between the Parties. If AT&T-13STATE does not terminate the provision of the products and/or services on the date specified in the thirty (30) days' notice and CARRIER's noncompliance continues, nothing contained herein shall preclude AT&T-13STATE's right to terminate the provision of the products and/or services to CARRIER without further notice.

7. BRANDING

- 7.1 Except where otherwise required by law or as expressly permitted by this Agreement (including without limitation any Attachment), CARRIER shall not, without AT&T-13STATE's written authorization, (i) offer products and/or services using the trademarks, service marks, trade names, brand names, logos, insignia, symbols or decorative designs of AT&T-13STATE or its Affiliates, or (ii) state or imply that there is any joint business association or similar arrangement with AT&T-13STATE or its Affiliates in the provision of products and/or services to CARRIER's own customers (including without limitation its end user customers). CARRIER may brand products and/or services included in this Agreement with its own brand name, but AT&T-13STATE will not provide for CARRIER branding of those products and/or services.
- 7.2 AT&T-13STATE shall not be obligated by this Agreement to provide CARRIER with branding of any kind including, but not limited to, technician apparel, vehicles, or forms; nor shall the AT&T-13STATE technicians carry and provide to CARRIER's customers (including, without limitation, its end user customers), CARRIER-specific branded business cards or other printed materials.

8. FORCE MAJEURE

- 8.1 AT&T-13STATE shall not be responsible for delays or failures in performance resulting from acts or occurrences beyond AT&T-13STATE's reasonable control, regardless of whether such delays or failures in performance were foreseen or foreseeable, including, without limitation: fire, explosion, power failure, power blackouts/brownouts, cable cuts, embargoes, epidemics, nuclear accidents, acts of God, acts of nature, unusually severe weather conditions, acts of civil or military authority, war, terrorist acts, riots, insurrection, revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation, strikes, slowdowns, picketing or boycotts; or delays caused by CARRIER or by other service or equipment vendors; or any other circumstances beyond AT&T-13STATE's reasonable control. AT&T-13STATE will give prompt notice to CARRIER when an event, as listed above, has occurred. When possible, the notice will identify the area(s) that is(are) affected by the event and the approximate time frame within which the event occurred and if known, the approximate date it is anticipated the event will conclude. When possible, AT&T-13STATE will provide reasonable updates concerning the event and will provide notification to CARRIER when the event will be or has completed and all affected areas are anticipated to return to business as usual.

9. GOVERNING LAW

- 9.1 Unless otherwise provided by applicable law, this Agreement shall be governed by and construed in accordance with the laws of the AT&T-13STATE State in which the product(s) and/or service(s) at issue were provided, and, if agreement cannot be reached upon which state law applies, or if the issues involve the provision of product(s) and/or service(s) in multiple states, the laws of the State of Texas shall apply, without regard to conflict in law principles of the applicable state's law.

10. LIMITATION OF LIABILITY/INDEMNITY

10.1 LIMITATION OF LIABILITY

- 10.1.1 Except for indemnity obligations expressly set forth herein or as otherwise expressly provided in specific Attachments, to the maximum extent permitted by applicable law each Party's liability to the other Party (and its Affiliates and their respective officers, directors, employees, agents, and other representatives) for any and all losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorneys' fees) ("Loss" or "Losses") relating to or arising out of such Party's performance under this Agreement and any and all dealings and arrangements between the Parties relating to the products and/or services hereunder (but excluding any Loss(es) relating to or arising out of any AT&T-13STATE tariffs and products purchased by CARRIER from AT&T-13STATE tariffs, which shall be governed exclusively by such tariffs) ("Commercial Relationship"), including any negligent act or omission (whether willful or inadvertent), whether in contract, tort or otherwise, including alleged breaches of this Agreement and causes of action alleged to arise from allegations that

breach this Agreement also constitute a violation of a statute, shall not exceed in total the amount AT&T-13STATE or CARRIER has charged or would have charged to the other Party for the affected products and/or services that was not performed or was improperly performed (not to exceed the billings between the Parties for such affected products and/or services for the month or months in which the condition occurred, but not to exceed twelve (12) months in any event). To the maximum extent permitted by applicable law, neither CARRIER nor AT&T-13STATE shall be liable to the other Party for any indirect, incidental, reliance, special, consequential, punitive, exemplary, or multiple damages (including without limitation for any lost business opportunity/profits) suffered by the other Party, regardless of the form of action, whether in contract, warranty, strict liability, tort or otherwise, including negligence of any kind, whether active or passive (and including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement constitutes a violation of a statute), and regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with or arising from anything said, omitted, or done hereunder or related hereto, including willful acts or omissions; provided that the foregoing shall not limit a Party's obligation under Section 10.1.2 to indemnify, defend, and hold the other Party harmless against any amounts payable to a third party, including any Losses, and indirect, incidental, reliance, special, consequential, punitive, exemplary, or multiple damages (including without limitation for any lost business opportunity/profits) of such third party, subject to Section 10.1.3 below; provided, however, nothing in this Section 10.1.1 shall impose indemnity obligations on a Party for any Losses or indirect, incidental, reliance, special, consequential, punitive, exemplary, or multiple damages (including without limitation for any lost business opportunity/profits) suffered by that Party's customers (including without limitation its end user customers) in connection with any affected products and/or services. Rather, each Party ("Indemnifying Party") hereby releases and holds harmless the other Party ("Indemnitee") and Indemnitee's Affiliates (and their respective officers, directors, employees, agents, and other representatives) against any Loss or claim made by or through the Indemnifying Party's customers (including without limitation its end user customers).

10.1.2 Except as otherwise expressly provided in specific Attachments, in the case of any Loss alleged or claimed by a third party to have arisen out of the gross negligence or willful misconduct of any Party, each Party shall bear, and its obligation shall be limited to, that portion (as mutually agreed to by the Parties or as otherwise established) of the resulting expense caused by its own gross negligence or willful misconduct or that of its officers, directors, employees, agents, contractors, or others acting in aid or concert with it.

10.1.3 A Party may, in its sole discretion, provide in its tariffs and contracts with its customers (including without limitation its end user customers) or third parties that relate to any products and/or services provided or contemplated by this Agreement that, to the maximum extent permitted by applicable law, such Party shall not be liable to such customer or third party for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged such customer or third party for the products and/or services that gave rise to such Loss and (ii) any indirect, incidental, reliance, special, consequential, punitive, exemplary, or multiple damages (including without limitation for any lost business opportunity/profits). If a Party elects not to place in its tariffs or contracts such limitation(s) of liability, and the other Party incurs a Loss as a result thereof, the first Party shall indemnify and reimburse the other Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and contracts the limitation(s) of liability described in this Section 10.1.3.

10.1.4 AT&T-13STATE (and its Affiliates and their respective officers, directors, employees, agents, and other representatives) shall not be liable for damages to a customer's premises (including without limitation the premises of its end user customers) resulting from the furnishing of any products and/or services hereunder including, if applicable, the installation and removal of equipment and associated wiring, unless the damage is caused by AT&T-13STATE's gross negligence or willful misconduct, subject to Section 10.1.5 below.

10.1.5 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE PARTIES VOLUNTARILY AGREE, AFTER CONSULTATION WITH THEIR RESPECTIVE COUNSEL, THAT THE RIGHTS AND REMEDIES AS STATED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, DISPUTE RESOLUTION, SECTION 12, OF THIS AGREEMENT (AS TO THE SUBJECT-MATTER OF THIS AGREEMENT) ARE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO EITHER PARTY WITH RESPECT TO ANY CLAIMS, LOSS(ES) AND DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ALL DEALINGS, ARRANGEMENTS, NEGOTIATIONS, AND/OR COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE COMMERCIAL RELATIONSHIP, INCLUDING SUCH MATTERS WITH RESPECT TO ACTUAL OR POTENTIAL WHOLESALE TERMS AND CONDITIONS APPLICABLE TO ANY AREA WITHIN THE DOMESTIC UNITED STATES IN WHICH AT&T-13STATE OPERATES (BUT EXCLUDING ANY CLAIMS, LOSS(ES) AND DISPUTES RELATING TO OR ARISING OUT OF ANY AT&T-13STATE TARIFFS, WHICH SHALL BE GOVERNED EXCLUSIVELY BY SUCH TARIFFS), AND ARE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES THAT A PARTY MAY POSSESS PURSUANT TO STATUTE, OR AT COMMON LAW OR IN EQUITY.

10.1.6 Any state or federal tariff references made within this Agreement, including all Attachments/Appendices, refer to tariffs filed by AT&T-13STATE, as such tariffs may be modified from time to time.

10.2 INDEMNITY

10.2.1 **Responsibility of Each Party for its Services:** Except as otherwise expressly provided in this Agreement (including without limitation in a product/service-specific Attachment), each Party shall be responsible only for the products and/or services which are provided by such Party, its agents, contractors, subcontractors, or others retained by such Party, and neither Party shall bear any responsibility for the products and/or services provided by the other Party, its agents, contractors, subcontractors, or others retained by such other Party.

10.2.2 **Claims of Loss by Third Party(ies):** Except as otherwise expressly provided in this Agreement (including without limitation in a product/service-specific Attachment) and subject to Section 10.1, Limitation of Liability above, and to the extent not prohibited by applicable law and not otherwise controlled by tariff, each Party (the "Indemnifying Party") shall release, defend and indemnify the other Party (the "Indemnified Party") and hold such Indemnified Party harmless against any Losses to a third party arising out of the gross negligence, recklessness, or willful misconduct ("Fault") of such Indemnifying Party, its officers, directors, employees, agents, its customers (including without limitation its end user customers), contractors, or others retained by the Indemnifying Party, in connection with the Indemnifying Party's provision of products and/or services and performance under this Agreement and the Commercial Relationship; provided, however, that (i) with respect to employees or agents of the Indemnifying Party, such Fault occurs while performing within the scope of their employment or agency, respectively, (ii) with respect to subcontractors of the Indemnifying Party, such Fault occurs in the course of performing duties of the subcontractor under its subcontract with the Indemnifying Party, and (iii) with respect to the Fault of employees or agents of such subcontractor, such Fault occurs while performing within the scope of their employment by the subcontractor with respect to such duties of the subcontractor under the subcontract.

10.2.3 **Claims of Loss by a Customer (including without limitation an end user customer) of a Party:** Except as otherwise expressly provided in this Agreement (including without limitation in a product/service-specific Attachment) and subject to Section 10.1, Limitation of Liability above, in the case of any Loss alleged or claimed by a customer (including without limitation an end user customer) of either Party, the Party whose customer alleged or claimed such Loss (the "Indemnifying Party") shall defend and indemnify the other Party (the "Indemnified Party") against any and all such claims or Losses by such Indemnifying Party customer regardless of whether the underlying product and/or service or performance giving rise to such claim or Loss was provided or provisioned by the Indemnified Party, unless the claim or Loss was caused by the gross negligence, recklessness, or

willful misconduct of the Indemnified Party. Notwithstanding anything to the contrary in this Section 10.2.3 and this Agreement, AT&T-13STATE shall have no liability to the customers (including without limitation its end user customers) of CARRIER for claims arising from the provision of the products and/or services hereunder to CARRIER, including but not limited to claims related to CARRIER's marketing or sales of CARRIER's offerings that are based on or use the products and/or services provided hereunder, delayed restoral or nonrestoral of the products and/or services hereunder, quality of service or any resulting billing or any other type of dispute. CARRIER agrees to indemnify, defend, and hold AT&T-13STATE harmless from and against any and all claims, demands, costs, damages, liabilities, and expenses (including reasonable attorney fees) arising from any claim or action initiated by CARRIER's customer (including without limitation an end user customer) for any products and/or services provided hereunder.

10.2.4 Claims of Loss by a Party Against other Party: Subject to Section 10.1, Limitation of Liability above, a Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party ("Indemnified Party") against any claim or Loss arising from the Indemnifying Party's use of products and/or services provided hereunder, or performance, under this Agreement, including, without limitation, any claim(s) or Loss(es) arising from: Indemnifying Party's use of products and/or services offered under this Agreement, involving any claim for libel, slander, invasion of privacy, or infringement of Intellectual Property rights arising from the Indemnifying Party's or its customer's use (including without limitation use by an end user customer) use.

10.2.5 CARRIER Indemnity for Damage to Facilities: CARRIER shall reimburse AT&T-13STATE for damages to AT&T-13STATE's facilities utilized to provide any products and/or services hereunder caused by the gross negligence or willful act of CARRIER, its officers, directors, employees, agents, contractors, or subcontractors or CARRIER's customers (including without limitation its end user customers) or resulting from CARRIER's or its customer's improper use of AT&T-13STATE's facilities, or due to malfunction of any facilities, functions, products, services or equipment provided by any person or entity other than AT&T-13STATE. Upon reimbursement for damages, AT&T-13STATE will cooperate with CARRIER in prosecuting a claim against the person or entity causing such damage. CARRIER shall be subrogated to the right of recovery by AT&T-13STATE for the damages to the extent of such payment. In addition, CARRIER hereby agrees to assume any and all liability for any such intrusive testing it performs, including the payment of all costs associated with any damage, service interruption, or other service degradation or damage to AT&T-13STATE facilities and hereby agrees to release, defend and indemnify AT&T-13STATE, and hold AT&T-13STATE harmless, from any claims for loss or damages, including but not limited to direct, indirect, incidental, reliance, special, consequential, punitive, exemplary, or multiple damages (including without limitation for any lost business opportunity/profits), made against AT&T-13STATE by a customer (including without limitation an end user customer), any telecommunications service provider or telecommunications user relating to such testing by CARRIER.

10.2.6 Indemnification Procedures: Whenever a claim shall arise for indemnification under this Section 10.2, the relevant Indemnified Party, as appropriate, shall promptly notify the Indemnifying Party and request in writing the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim. The Indemnifying Party shall have the right to defend against such liability or assertion, in which event the Indemnifying Party shall give written notice to the Indemnified Party of acceptance of the defense of such claim and the identity of counsel selected by the Indemnifying Party. Until such time as Indemnifying Party provides written notice of acceptance of the defense of such claim, the Indemnified Party shall defend such claim, at the expense of the Indemnifying Party, subject to any right of the Indemnifying Party to seek reimbursement for the costs of such defense in the event that it is determined that Indemnifying Party had no obligation to indemnify the Indemnified Party for such claim. Upon accepting the defense, the Indemnifying Party shall have exclusive right to control and conduct the defense and settlement of any such claims, subject to consultation with the Indemnified Party. So long as the Indemnifying Party is controlling and conducting the defense, the Indemnifying

Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement. At any time, an Indemnified Party shall have the right to refuse a compromise or settlement, and, at such refusing Party's cost, to take over such defense; provided that, in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the refusing Party against, any cost or liability in excess of such refused compromise or settlement. With respect to any defense accepted by the Indemnifying Party, the Indemnified Party will be entitled to participate with the Indemnifying Party in such defense if the claim requests equitable relief or other relief that could affect the rights of the Indemnified Party, and shall also be entitled to employ separate counsel for such defense at such Indemnified Party's expense. If the Indemnifying Party does not accept the defense of any indemnified claim as provided above, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. In the event of a failure to assume the defense, the Indemnified Party may negotiate a settlement, which shall be presented to the Indemnifying Party. If the Indemnifying Party refuses to agree to the presented settlement, the Indemnifying Party may take over the defense. If the Indemnifying Party refuses to agree to the presented settlement and refuses to take over the defense, the Indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the Indemnifying Party. Each Party agrees to cooperate and to cause its officers, directors, employees, agents, and other representatives to cooperate with the other Party in the defense of any such claim and the relevant records of each Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in Nondisclosure, Section 13, of this Agreement.

11. BILLING AND PAYMENT OF RATES AND CHARGES AND BILLING DISPUTES

- 11.1 AT&T-13STATE shall include all charges under this Agreement on the monthly bill(s) rendered to CARRIER (hereinafter "invoice").
- 11.2 CARRIER shall pay all charges under this Agreement within thirty (30) days of the invoice date.
- 11.3 A good faith billing dispute under this Agreement requires CARRIER to provide a written claim to AT&T-13STATE to permit AT&T-13STATE to investigate the merits of the dispute. Such claim must identify the following within ten (10) Business Days from the date AT&T-13STATE is notified of the dispute: (a) the account number under which the invoice has been rendered; (b) the specific charge that the customer believes was billed in error; (c) the date of the invoice; and (d) the reason or grounds for the dispute.
- 11.4 CARRIER billing inquiries and/or claims of overbilling by AT&T-13STATE shall be referred to AT&T-13STATE for investigation within six (6) months of the charge(s) first appearance on the invoice to CARRIER. Absent a claim and/or dispute by CARRIER as to a charge within six (6) months from its first appearance on an invoice to CARRIER, such charge shall be deemed to be correct. If the Parties determine that CARRIER was billed incorrectly for products and/or services rendered pursuant to this Agreement, a billing adjustment shall be calculated. If a refund is due, an adjustment shall be made for the overcharges. If an overcharge is adjusted within three billing cycles of the invoice in error, interest will not be applicable. If the overcharge is not adjusted within three billing cycles, interest on the amount will be credited at the lower of 1 percent per month compounded daily or the highest interest rate permitted by applicable law in the AT&T-13STATE state. If the dispute is decided in favor of AT&T-13STATE, then the resolution date will be the date upon which Notice is deemed to have been received by CARRIER under the Notice provisions in this Agreement ("Resolution Date") and CARRIER shall pay AT&T-13STATE interest on the disputed amount at the lower of one (1) percent per month compounded daily or the highest interest rate permitted by applicable law in the AT&T-13STATE state within fourteen (14) days of the Resolution Date.

12. DISPUTE RESOLUTION

12.1 Finality of Disputes

12.1.1 Except as otherwise specifically provided for in this Agreement including without limitation, Section 11 above (as to billing disputes), no claim may be brought for any dispute arising from this Agreement and the Commercial Relationship more than twenty-four (24) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

12.2 Alternative to Litigation

12.2.1 The Parties desire to resolve disputes arising out of or relating to this Agreement and with respect to all dealings, arrangements, negotiations and/or communications between the Parties relating to this Agreement and the Commercial Relationship without litigation. Accordingly, the Parties agree to use the following Dispute Resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement and the Commercial Relationship.

12.3 Commencing Dispute Resolution

12.3.1 Dispute Resolution shall commence upon one Party's receipt of written notice of a controversy or claim arising out of or relating to this Agreement or its breach and Commercial Relationship. No Party may pursue any claim unless such written notice has first been given to the other Party. There are three (3) separate Dispute Resolution methods:

12.3.1.1 Billing disputes: Billing Disputes between the Parties arising out of or relating to this Agreement shall be resolved in accordance with the procedures set forth in Section 11 above and Section 12.5 below.

12.3.1.2 Informal Dispute Resolution (described below); and

12.3.1.3 Formal Dispute Resolution (described below).

12.4 Informal Resolution of Non-Billing Disputes

12.4.1 Billing disputes which are addressed in Section 11 of this Agreement are not subject to this Informal Resolution Process.

12.4.2 Upon receipt by one Party of notice of a non-billing related dispute by the other Party pursuant to Section 12.3.1 above, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement and the Commercial Relationship. Upon agreement, the representatives may utilize other alternative Dispute Resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both Parties. Documents identified in or provided with such communications that were not prepared for purposes of the negotiations are not so exempted, and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit. If the Parties are unable to resolve the non-billing dispute through informal dispute resolution procedures within sixty (60) calendar days after receipt of the letter initiating Dispute Resolution under Section 12.3.1 of this Agreement, then either Party may invoke Formal Dispute Resolution under Section 12.5 of this Agreement, or the Parties may agree, in writing, to extend the informal dispute resolution period for the number of days that they deem necessary to resolve the dispute.

12.5 Formal Dispute Resolution

12.5.1 If the Parties are unable to resolve the dispute through the informal procedure described in Section 11 above (as to billing disputes) or Section 12.4 above (as to non-billing related disputes), then either Party may invoke the formal Dispute Resolution procedures described in this Section 12.5. Formal Dispute Resolution procedures may not be invoked by either Party with respect to non-billing

related disputes earlier than the date that is sixty (60) calendar days after receipt of the letter initiating Dispute Resolution under Section 12.3.1 of this Agreement.

12.5.2 Claims Subject to Mandatory Arbitration. The following claims, if not settled through the informal procedure described in Section 11 above (as to billing disputes) will be subject to mandatory arbitration pursuant to Section 12.6 below:

12.5.2.1 Each unresolved billing dispute involving one percent (1%) or less of the amounts charged to the Disputing Party under this Agreement and the Commercial Relationship in the state in which the dispute arises during the twelve (12) months immediately preceding receipt of the letter initiating a billing dispute under Section 11 above. If the disputing Party has not been billed for a minimum of twelve (12) months immediately preceding receipt of the letter initiating a billing dispute under Section 11 the Parties will annualize the actual number of months billed.

12.5.2.2 All Other Claims and Relief. Any claim and any relief other than as specified in Section 12.5.2.1 is not subject to mandatory arbitration. Except to the extent that both parties otherwise agree, either Party may proceed with any remedy available to it pursuant to law or equity before any appropriate judicial or regulatory authority with jurisdiction over the parties and subject matter of the claim which shall be subject to the Limitation of Liability and Indemnity provisions set forth in this Agreement.

12.5.3 All Other Claims and Relief. Any claim and any relief other than as specified in Section 12.5.2.1 is not subject to mandatory arbitration. Except to the extent that both parties otherwise agree, either Party may proceed with any remedy available to it pursuant to law or equity before any appropriate judicial or regulatory authority with jurisdiction over the parties and subject matter of the claim which shall be subject to the Limitation of Liability and Indemnity provisions set forth in this Agreement.

12.6 Arbitration

12.6.1 Disputes subject to mandatory arbitration (or when arbitration is agreed to by both Parties) under the provisions of this Agreement will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. The arbitrator shall be knowledgeable of telecommunications issues. All arbitrations will be held in Dallas, Texas unless the Parties agree otherwise. The arbitration hearing will be requested to commence within sixty (60) calendar days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) calendar days after the close of hearings. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, not state law, shall govern the arbitrability of all disputes. The arbitrator will have no authority to award punitive damages, exemplary damages, consequential Damages, multiple damages, or any other damages not measured by the prevailing Party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. The times specified in this Section may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures, including attorneys' fees. The Parties will equally split the fees of the arbitration and the arbitrator. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

13. NONDISCLOSURE

13.1 Each Party anticipates and recognizes that it will come into possession of technical or business information or data about the other Party and/or its customers (including without limitation its end user customers) as a result of this Agreement which will be considered confidential by such other Party. The Parties agree (1) to treat all such information and data as strictly confidential; and (2) to use such information only for purposes of performance under this Agreement. Each Party agrees not to disclose confidential information and/or

data of or pertaining to the other Party or its customers (including without limitation its end user customers) to any third party without first securing the written consent of such Party. The foregoing shall not apply to information which is in the public domain. Nothing in this Agreement prevents either Party from disclosing operations results or other data that might reflect the results of this Agreement as a part of that Party's aggregate operating data as long as the disclosed data is at a level of aggregation sufficient to avoid disclosing with specificity information obtained in the operation of this Agreement.

- 13.2 If a court or governmental agency orders or a third-party requests a Party to disclose or to provide any data or information covered by this Section 13, that Party will immediately inform the other Party of the order or request before such data or information is provided and will inform the other Party both by telephone and certified mail. Notification and consent requirements described above are not applicable in cases where a court order requires the production of billing and/or usage records of or pertaining to an individual customer (including without limitation an end user customer).
- 13.3 This Section 13 will not preclude the disclosure by a Party of information or data subject to this Section to consultants, agents, or attorneys representing that Party, or the Office of the Public Counsel for a State, or appropriate State Commissions or staffs, or FCC Staff, provided that such representatives are informed of the confidential nature of the information and/or date prior to disclosure and are bound by confidentiality requirements that are at least as restrictive as applicable to the Parties to this Agreement.
- 13.4 The provisions of this Section 13 shall survive the expiration and/or termination of this Agreement, unless agreed to in writing by the Parties.

14. PUBLICITY

- 14.1 Except as may be expressly provided elsewhere in this Agreement (including without limitation the Attachments), the Parties agree not to use in any advertising or sales promotion, press releases or other publicity matters any endorsements, direct or indirect quotes, or pictures implying endorsement or business relationships by the other Party or any of its employees without such Party's prior written approval. Each Party will submit to each other for written approval, prior to publication, all publicity matters that mention or display one another's name and/or marks or contain symbols, pictures, or language from which a connection to said name and/or marks may be inferred or implied.

15. ASSIGNMENT

- 15.1 CARRIER may not assign, subcontract, or otherwise transfer any of its rights or obligations under this Agreement except under such terms and conditions as are mutually acceptable to CARRIER and AT&T-13STATE and with AT&T-13STATE's prior written consent, which consent shall not be unreasonably withheld.

16. NOTICES

- 16.1 Except as otherwise explicitly provided herein, notices given by one Party to the other Party under this Agreement shall be in writing and shall be: (a) delivered personally; or (b) delivered by express overnight delivery service; or (c) mailed, via certified mail or first class U.S. Postal Service, with postage prepaid, and a return receipt requested; or (d) delivered by facsimile; provided that a paper copy is also sent by a method described above in subsections (a), (b) or (c).
- 16.2 Except as otherwise explicitly provided herein, notices will be deemed given as of the earliest of: (a) the date of actual receipt; or (b) the next Business Day when sent via express overnight delivery service; or (c) five (5) calendar days after mailing in the case of first class or certified U.S. Postal Service; or (d) on the date set forth on the confirmation produced by the sending facsimile machine when delivered by facsimile prior to 5:00 p.m. in the recipient's time zone, but the next Business Day when delivered by facsimile at 5:00 p.m. or later in the recipient's time zone.

16.3 Except as otherwise explicitly provided herein, notices will be addressed to the Parties as follows:

NOTICE CONTACT	CARRIER CONTACT	AT&T-13STATE CONTACT
NAME/TITLE	Susan Riley Senior Contract Manager	Contract Management ATTN: Notices Manager
STREET ADDRESS	5565 Glenridge Connector Suite 1520	311 S. Akard, 9 th Floor Four AT&T Plaza
CITY/STATE/ZIP CODE	Atlanta, GA 30342	Dallas, TX 75202
FACSIMILE NUMBER	404-236-6262	(214) 464-2006

With Copy to: Michael Van Eckhardt
Senior Network Counsel
AT&T Mobility
8645 154th Ave. NE
P. O. Box 97061
Redmond, WA 98073-9761

Either Party may unilaterally change its designated contact, address, telephone number and/or facsimile number for the receipt of notices by giving written notice to the other Party in compliance with this Section. Any notice to change the designated contact, address, telephone and/or facsimile number for the receipt of notices shall be deemed effective ten (10) calendar days following receipt by the other Party.

16.4 In addition, Carrier agrees that it is responsible for providing AT&T-13STATE with Carrier's OCN and ACNA numbers for the states in which Carrier is authorized to do business and in which Carrier is requesting that this Agreement apply. Notwithstanding the other provisions of this Section 16, Carrier shall provide the OCN and ACNA numbers to AT&T-13STATE through its "CLEC Profile", using the web-based interface that AT&T-13STATE provides for such purposes. In the event that CARRIER wants to change and/or add to the OCN and/or ACNA information in the CLEC Profile, CARRIER shall send written notice to AT&T-13STATE to be received at least 30 days prior to the change and/or addition in accordance with this Section 16 notice provision; Carrier shall also update its CLEC Profile through the web-based interface.

17. THIRD PARTY BENEFICIARIES

17.1 This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any third party beneficiary rights hereunder. This Agreement shall not provide any non-party with any remedy, claim, cause of action or other right.

18. TAXES

18.1 CARRIER shall be responsible for all federal, state or local, sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees, or surcharges (hereinafter "Tax(es)") imposed on or with respect to the products and/or services provided under this Agreement including those Taxes the incidence of which is imposed on AT&T-13STATE other than taxes imposed on the income of AT&T-13STATE. CARRIER shall reimburse AT&T-13STATE for the amount of any such Taxes that AT&T-13STATE is required to pay or collect. CARRIER agrees to indemnify and hold harmless AT&T-13STATE for any costs incurred by AT&T-13STATE as a result of actions taken by the applicable taxing authority to collect the Tax from AT&T-13STATE due to the failure of CARRIER to pay or collect and remit any Tax to such authority. Nothing shall prevent AT&T-13STATE from paying any Tax to the appropriate taxing authority prior to the time: (1) it bills CARRIER for such Tax, or (2) it collects the Tax from CARRIER. Notwithstanding anything in this Agreement to the contrary, CARRIER shall be liable for and AT&T-13STATE may collect Taxes which were assessed by or paid to an appropriate taxing authority within the statute of limitations period but not included on an invoice within four (4) years after the Tax otherwise was owed or due.

18.2 CARRIER acknowledges and agrees that it is required to comply with Chapter 283 of the Texas Local Government Code, as it may be amended from time to time, and the reporting and compensation requirements of Subchapter R of the P.U.C. Substantive Rules - Chapter 26, Applicable to Telecommunications Service Providers, as they may be amended from time to time. With respect to

municipal fees charged pursuant to Chapter 283, Tex. Loc. Gov't Code, CARRIER agrees that it will directly report its access lines to the Texas Public Utility Commission, will remit the related payments to municipalities, and will otherwise comply with Chapter 283 and applicable P.U.C rules, as they may be amended from time to time.

- 18.3 To the extent a purchase of any products and/or services provided under this Agreement is claimed to be for resale and thus subject to tax exemption, CARRIER shall furnish AT&T-13STATE a proper resale tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the CARRIER for any period prior to the date that CARRIER presents a valid certificate. If applicable law excludes or exempts a purchase of a product and/or service provided under this Agreement from a Tax, but does not also provide an exemption procedure, then AT&T-13STATE will not collect such Tax if CARRIER (a) furnishes AT&T-13STATE with a letter signed by an officer of the CARRIER claiming an exemption and identifying the applicable law that both allows such exemption and does not require an exemption certificate; and (b) supplies AT&T-13STATE with an indemnification agreement, reasonably acceptable to AT&T-13STATE, which holds AT&T-13STATE harmless from any Tax, interest, penalties, loss, cost or expense with respect to forbearing to collect such Tax.
- 18.4 With respect to any Tax or Tax controversy covered by this Section 18, CARRIER is entitled to contest with the imposing jurisdiction, pursuant to applicable law and at its own expense, any Tax that it is ultimately obligated to pay. CARRIER will ensure that no lien is attached to any asset of AT&T-13STATE as a result of any contest. CARRIER shall be entitled to the benefit of any refund or recovery of amounts that it had previously paid resulting from such a contest. Amounts previously paid by AT&T-13STATE shall be refunded to AT&T-13STATE.
- 18.5 If a Party is assessed by a taxing authority or jurisdiction any Tax which has been paid by or been invoiced to the other Party that arises in conjunction with or directly related to this Agreement, then the Parties will work cooperatively and assist each other as necessary in resolving the matter with the taxing authority or jurisdiction.

19. EFFECTIVE DATE, TERM, EXPIRATION AND TERMINATION

- 19.1 The Effective Date of this Agreement shall be ten (10) Business Days after both Parties' final authorizing signatures have been affixed to this Agreement (the "Effective Date").
- 19.2 Except as otherwise provided herein, the term ("the Term") of this Agreement shall commence upon the Effective Date of this Agreement.)
- 19.3 As of the Effective Date, AT&T-13STATE and Carrier are parties to one or more Interconnection Agreements pursuant to Sections 251/252 of the Act ("Currently Effective Interconnection Agreements"), in one or more states in the Service Area. For each such state, the Term of this Agreement shall continue until the termination date of the Currently Effective Interconnection Agreement. Thereafter, this Agreement shall remain in effect until the effective date of a successor agreement governing Transit Traffic Service, as defined in the Transit Traffic Service Attachment, including either a commercial agreement or an interconnection agreement pursuant to Sections 251/252 of the Act; provided, however, that this Agreement shall at all times be subject to early termination as provided in Section 19.5 and Section 6.1.)
- 19.4 Upon the termination of this Agreement, neither Party shall have any further obligation under this Agreement, except as otherwise provided in Section 19.7, below, and pursuant to Section 32, Survival.
- 19.5 Notwithstanding any other provision of this Agreement, and in addition to AT&T-13STATE's rights to terminate under other Sections of this Agreement, including without limitation Sections 19.8, 19.9, and 32, a Party may terminate this Agreement in the event that the other Party fails to perform a material obligation or breaches a material provision of this Agreement and the other Party fails to cure such nonperformance or breach by 5:00 p.m. Central Time on the 45th calendar day after receipt of written notice thereof. If the Party against which the claim of nonperformance or breach is made materially and in good faith disagrees with the claim, it shall notify the claiming Party of its disagreement in writing by 5:00 p.m. Central Time of the 14th day following receipt of the nonperformance/breach notice, providing with specificity the basis for

its disagreement, and the dispute shall then be resolved between the Parties pursuant to Section 11 above (as to billing disputes) and Section 12 above. If the nonperformance/breach is not disputed in a timely manner, the Party shall cure the nonperformance/breach and certify in writing to the other by deadline on the 45th day that the nonperformance/breach has been cured. Any termination of this Agreement pursuant to this Section 19 shall take effect in accordance with the written notice delivered to the nonperforming/breaching Party after it failed to cure and/or to certify by the deadline on that 45th day.

- 19.6 By the Expiration Date or Termination Date of this Agreement, AT&T-13STATE and CARRIER shall cooperate in good faith to effect an orderly transition of CARRIER's customers (including without limitation its end user customers) who are being served by CARRIER using the products and/or services hereunder; provided that CARRIER shall be solely responsible (from a financial, operational and administrative standpoint) to ensure that its customers (including without limitation its end user customers) have been transitioned to another serving arrangement or to a different telecommunications carrier by the Expiration Date or Termination Date of this Agreement or that such customers (including without limitation its end user customers) have otherwise been informed by CARRIER that their CARRIER-provided products and/or services will be discontinued/disconnected by CARRIER on or before the Expiration Date or Termination Date, unless otherwise provided herein or agreed by both Parties. If, before the Expiration Date or Termination Date, CARRIER has not transitioned or disconnected/discontinued the services that are being provided using the products and/or services hereunder, then AT&T-13STATE may terminate any such CARRIER services still in-service on the first day following such Expiration Date or Termination Date unless otherwise agreed in a writing signed by both Parties.
- 19.7 Upon the Expiration Date or Termination Date of this Agreement, in one or more State, neither Party shall have any further obligation under this Agreement in such State or State(s), except:
- 19.7.1 Each Party's confidentiality obligations shall survive; and
- 19.7.2 Each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement;
- 19.7.3 As provided in Survival, Section 32; and
- 19.7.4 As may be provided elsewhere in the Agreement (including without limitation the Attachments).
- In any event, AT&T-13STATE shall be under no obligation to provision any products and/or services pursuant to this Agreement as of and after the Expiration Date or Termination Date.
- 19.8 In the event that any federal or state government action (including by a regulatory agency, a court, or a legislature) requires AT&T-13STATE to: a) provide, modify or otherwise make available this Agreement or any part of this Agreement to CARRIER, any other telecommunications carrier, or any other person or entity, or b) permit or otherwise allow CARRIER, any other telecommunications carrier or any other person or entity to obtain any of the provisions of this Agreement as they were agreed to by the Parties without all of the other provisions of this Agreement, including by way of example, at prices or price structure/application or arrangements different than agreed to in this Agreement as a whole by the Parties, the Parties both agree, except to the extent prohibited by law, to waive their respective rights to such change in the Agreement, including but not limited to waiving any right they may have to obtain the terms available to other carriers, persons or entities as a result of such government action. However, if the Parties are prohibited from legally waiving the effects of such government action, then as between the Parties the procedures of Section 32 (Severability) shall be invoked to address those provisions that were required to be provided, modified, or otherwise made available to CARRIER, any other telecommunications carrier, or any other person or entity. Where the foregoing invocation of Section 32 (Severability) results in a right to terminate and is the result of a state government action, the right shall arise only in the state in which such action occurred and any termination of this Agreement would be for that state only (unless this Agreement is terminated pursuant to Section 19.9).
- 19.9 Section 19.9 (all references to Section 19.9 expressly includes its subsections) applies in accordance with its provisions, notwithstanding Section 19.8 or any other provision in this Agreement to the contrary.

- 19.9.1 **AT&T-13STATE** shall have the right to terminate this Agreement in whole or in part, upon written notice to CARRIER, in the event that any federal action, or state government actions in two or more states, (including by a regulatory agency, a court, or a legislature) requires **AT&T-13STATE** to: a) provide, modify or otherwise make available this Agreement or any part of this Agreement to any other telecommunications carrier, or any other person or entity, or b) permit or otherwise allow CARRIER, any other telecommunications carrier or any other person or entity to obtain any of the provisions of this Agreement as they were agreed to by the Parties without all of the other provisions of this Agreement as they were agreed to by the Parties, including by way of example, at prices or price structure/application or arrangements different than agreed to in this Agreement as a whole by the Parties. If such state government action only occurs in one state, **AT&T-13STATE** shall have the right to terminate the Agreement in that state by written notice to CARRIER. If such government action occurs at the federal level or in two or more states, **AT&T-13STATE** shall have the right to terminate, at its election, the Agreement in its entirety or, alternatively, only in one or more of the affected states, by written notice to CARRIER.
- 19.9.2 This Agreement shall be null and void, automatically and in its entirety in any single state if this Section 19.9 (in whole or in part) is rejected or held to be illegal, invalid and/or unenforceable, or otherwise not given effect in such state. This Agreement shall be null and void, automatically and in its entirety if either a) by state government action in two or more states, or b) by federal government action, this Section 19.9 (in whole or in part) is rejected or held to be illegal, invalid and/or unenforceable, or otherwise not given effect by such state and/or federal government action(s).
- 19.9.3 Any termination or invalidation of this Agreement under this Section 19.9 shall be effective as of the day before the effective date of such governmental action that triggered the invalidation or right to terminate, and **AT&T-13STATE** and CARRIER agree to expeditiously adopt and implement a transition plan to avoid or minimize impact on CARRIER's customers (including without limitation its end user customers) who are being served using the products and/or services hereunder.
- 19.9.4 Each Party understands and acknowledges that (i) any right to terminate under this Section 19.9 becomes available even if this Agreement between the Parties themselves would otherwise be unaffected by the triggering federal or state government action; and (ii) that this Section 19.9 (as well as Section 19.8) is triggered and applies on each occurrence of any federal or state government action described in Sections 19.8, 19.9.1 and/or 19.9.2.
- 19.10 In addition, **AT&T-13STATE** shall have the right, at its sole discretion, to terminate this Agreement if an "Event of Default" occurs, with neither any notice of default by **AT&T-13STATE** nor an opportunity for cure by CARRIER required. Such right shall be exercised by providing a written notice to terminate to CARRIER. Events of Default include the following, each of which the Parties agree would be a material breach of this Agreement:
- 19.10.1 The filing of a bankruptcy by CARRIER or any of its Affiliates (including the corporate parent of CARRIER, if any), pursuant to Chapter 7 or 11 of Title 11 of the United States Code.
- 19.10.2 The assignment, subcontracting, or otherwise transferring of CARRIER's rights or obligations under this Agreement in violation of Section 15.

20. WAIVER

- 20.1 The failure of either Party to enforce or insist that the other Party comply with the terms or conditions of this Agreement, or the waiver by either Party in a particular instance of any of the terms or conditions of this Agreement, shall not be construed as a general waiver or relinquishment of the terms and conditions, but this Agreement shall be and remain at all times, in full force and effect, unless terminated or amended as provided for herein.

21. DISCLAIMER OF WARRANTIES

- 21.1 **AT&T-13STATE** MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR

INTENDED OR PARTICULAR PURPOSE WITH RESPECT TO PRODUCTS AND/OR SERVICES PROVIDED HEREUNDER; AND AT&T-13STATE DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR INTENDED OR PARTICULAR PURPOSE FOR EACH PRODUCT AND SERVICE. ADDITIONALLY, AT&T-13STATE ASSUMES NO RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY CARRIER WHEN THIS DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

22. RELATIONSHIP OF THE PARTIES

- 22.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party (and each Party's contractor(s), if any) shall be solely responsible for all matters relating to payment of such employees, including the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to its employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts and all other regulations governing such matters. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.
- 22.2 This Agreement shall not establish, be interpreted as establishing, or be used by either Party to establish or to represent their relationship as any form of agency, partnership or joint venture. Neither Party shall have any authority to bind the other or to act as an agent or representative for the other unless written authority, separate from this Agreement, is provided. Nothing in this Agreement shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties. Nothing herein shall be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. No Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

23. FILING OF AGREEMENT; GOVERNMENTAL REQUIREMENT

- 23.1 To the extent required (and not exempted), the Parties understand and agree that this Agreement will be filed with the Federal Communications Commission pursuant to 47 U.S.C. § 211.
- 23.2 The Parties further understand and agree that to the extent a Party ("Disclosing Party") is requested, required or ordered by a state regulatory body or a court of competent jurisdiction finds, that this Agreement should be filed, or that such Agreement should be submitted to a state regulatory body for approval, or should a regulatory body or court of competent jurisdiction find that its provisions should be tariffed pursuant to applicable law or regulation, the Disclosing Party must provide the other Party ("Receiving Party") with written notice of such requirement as soon as possible and the Receiving Party shall cooperate with the Disclosing Party in expeditiously complying with any such request, order or finding.

24. AMENDMENTS AND MODIFICATIONS

- 24.1 Except as otherwise provided for in this Agreement, no provision of this Agreement shall be deemed amended or modified by either Party unless such an amendment or modification is in writing, dated, and signed by an authorized representative of both Parties. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications.

25. INTERPRETATION/JOINT WORK PRODUCT

- 25.1 This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective representatives and legal counsel, and shall be fairly interpreted in accordance with its provisions and, in the event of any ambiguities, no inferences shall be drawn against either Party.

26. NO LICENSE

- 26.1 Except as otherwise expressly provided in this Agreement (including without limitation any Attachment), no license under patents, copyrights or any other Intellectual Property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

27. INTELLECTUAL PROPERTY

- 27.1 Any Intellectual Property originating from or developed by a Party shall remain in the exclusive ownership of that Party.

28. COMPLIANCE AND CERTIFICATION

- 28.1 Each Party shall comply at its own expense with all applicable laws that relate to that Party's obligations to the other Party under this Agreement. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of applicable law.
- 28.2 CARRIER warrants that, to the extent applicable and required, it has obtained all necessary State certification required in each State covered by this Agreement. Upon request, each Party shall provide proof of certification.
- 28.3 Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, governmental authorities, building and property owners, other carriers, and any other third parties that may be required in connection with the performance of its obligations under this Agreement.
- 28.4 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the CALEA, to the extent applicable.

29. NETWORK MAINTENANCE AND MANAGEMENT

- 29.1 The Parties will exchange information appropriate for the implementation and performance of this Agreement (for example, as applicable, maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the government, escalation processes, etc.).
- 29.2 Each Party will provide a 24-hour contact number for network management issues to the other's surveillance management center.
- 29.3 CARRIER shall not use any products and/or services hereunder in any manner that interferes with or impairs or undermines service over any facilities of AT&T-13STATE, its Affiliated companies or other connecting telecommunications carriers, prevents any telecommunications carrier from using its telecommunications service, impairs the quality or the privacy of telecommunications service to other carriers or to either Party's end users, causes hazards to either Party's personnel or the public, damage to either Party's or any connecting carrier's facilities or equipment, including any malfunction of ordering or billing systems or equipment. Upon such occurrence either Party may discontinue using or refuse to provide the products and/or services hereunder, but only for so long as the other Party is violating this provision. Upon any such violation, either Party shall provide the other Party notice of the violation at the earliest practicable time.

30. CUSTOMER INQUIRIES/END USER NOTICES

- 30.1 Except as may otherwise be required hereunder, each Party will refer all questions regarding the other Party's services or products directly to the other Party.

- 30.2 Except as may otherwise be required hereunder, each Party will ensure that its representatives who receive inquiries regarding the other Party's services:
- 30.2.1 Direct the caller to the other Party if the caller inquires about the other Party's services or products; and
- 30.2.2 Do not in any way disparage or discriminate against the other Party or its products or services.
- 30.3 CARRIER shall be responsible for all notices and other communications with its customers (including without limitation end user customers), including without limitation any notices of pending disconnection due to the termination or expiration of this Agreement.

31. INSURANCE

- 31.1 This Section is a general statement of insurance requirements and shall be in addition to any specific requirement of insurance referenced elsewhere in this Agreement or a Referenced Instrument. The other Party must be named as an Additional Insured on the Commercial General Liability policy. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance, which may be provided through a program of self-insurance as provided in 31.5. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance coverage. Each Party agrees to provide the other Party with at least thirty (30) days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.
- 31.1.1 With respect to each WSP's performance under this Agreement, and in addition to each WSP's obligation to indemnify, each WSP shall at its sole cost and expense:
- 31.1.1.1 maintain the insurance coverages and limits required by this Section and any additional insurance and/or bonds required by law;
- 31.1.1.2 at all times during the term of this Agreement and until completion of all work associated with this Agreement, whichever is later, and
- 31.1.1.3 with respect to any coverage maintained in a "claims-made" policy, for two (2) years following the term of this Agreement or completion of all work associated with this Agreement, whichever is later. If a "claims-made" policy is maintained, the retroactive date must precede the commencement of work under this Agreement;
- 31.1.1.4 require each subcontractor who may perform work under this Agreement or enter upon the work site to maintain coverages, requirements, and limits at least as broad as those listed in Section 31 from the time when the subcontractor begins Work, throughout the term of the subcontractor's work and, with respect to any coverage maintained on a "claims-made" policy, for two (2) years thereafter;
- 31.1.1.5 procure the required insurance from an insurance company eligible to do business in the state or states where work will be performed and having and maintaining a Financial Strength Rating of "A-" or better and a Financial Size Category of "VII" or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies, except that, in the case of Workers' Compensation insurance, each party may procure insurance from the state fund of the state where work is to be performed. Each party shall deliver such certificates:
- 31.1.1.6 prior to execution of this Agreement and prior to commencement of any work;
- 31.1.1.7 prior to expiration of any insurance policy required in this Section; and
- 31.1.1.8 for any coverage maintained on a "claims-made" policy, for two (2) years following the term of this Agreement or completion of all work associated with this Agreement, whichever is later.

31.2 The Parties agree:

- 31.2.1 the failure of either party to demand such certificate of insurance or failure of either party to identify a deficiency will not be construed as a waiver of each party's obligation to maintain the insurance required under this Agreement;
- 31.2.2 that the insurance required under this Agreement does not represent that coverage and limits will necessarily be adequate to protect each party, nor be deemed as a limitation on each party's liability to each other in this Agreement;
- 31.2.3 each party may meet the required insurance coverages and limits with any combination of primary and Umbrella/Excess liability insurance; and
- 31.2.4 each party is responsible for any deductible or self-insured retention.

31.3 If WSP is not and does not collocate with AT&T-13STATE during the Term, the following insurance requirements will apply:

31.3.1 Each Party shall keep and maintain in force at each Party's expense all insurance required by Applicable Law, including:

- 31.3.1.1 Workers' Compensation insurance with benefits afforded under the laws of any state in which the work is to be performed and Employers Liability insurance with limits of at least:

- \$500,000 for Bodily Injury – each accident
 - \$500,000 for Bodily Injury by disease – policy limits
 - \$500,000 for Bodily Injury by disease – each employee.

To the fullest extent allowable by Law, the policy must include a waiver of subrogation in favor of each party, its Affiliates, and their directors, officers and employees. In states where Workers' Compensation insurance is a monopolistic state-run system, each party shall add Stop Gap Employers Liability with limits not less than \$500,000 each accident or disease.

- 31.3.2 Commercial General Liability insurance written on Insurance Services Office (ISO) Form CG 00 01 12 04 or a substitute form providing equivalent coverage, covering liability arising from premises, operations, personal injury, products/completed operations, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with limits of at least:

- 31.3.2.1 \$2,000,000 General Aggregate limit
 - \$1,000,000 each occurrence limit for all bodily injury or property damage incurred in any one (1) occurrence
 - \$1,000,000 each occurrence limit for Personal Injury and Advertising Injury
 - \$2,000,000 Products/Completed Operations Aggregate limit
 - \$1,000,000 each occurrence limit for Products/Completed Operations
 - \$1,000,000 Damage to Premises Rented to You (Fire Legal Liability)

- 31.3.2.2 The Commercial General Liability insurance policy must:

- include each party, its Affiliates, and their directors, officers, and employees as Additional Insureds. Each party shall provide a copy of the Additional Insured endorsement to the other party. The Additional Insured endorsement may either be specific to each party or may be "blanket" or "automatic" addressing any person or entity as required by contract. A copy of the Additional Insured endorsement must be provided within 60 days of execution of this Agreement and within 60 days of each Commercial General Liability policy renewal; include a waiver of subrogation in favor of each party, its Affiliates, and their directors, officers and employees; and be primary and non-contributory with respect to any insurance or self-insurance that is maintained by each party.

- 31.3.2.3 Business Automobile Liability insurance with limits of at least \$1,000,000 each accident for bodily injury and property damage, extending to all owned, hired, and non-owned vehicles.
- 31.4 If at any time during the Term WSP decides to collocate with AT&T-13STATE, the following insurance requirements will apply:
 - 31.4.1 The limits of the Commercial General Liability limits must be increased to:
 - 31.4.1.1 \$10,000,000 General Aggregate limit
 - \$5,000,000 each occurrence limit for all bodily injury or property damage incurred in any one (1) occurrence
 - \$5,000,000 each occurrence limit for Personal Injury and Advertising Injury
 - \$10,000,000 Products/Completed Operations Aggregate limit
 - \$5,000,000 each occurrence limit for Products/Completed Operations
 - \$2,000,000 Damage to Premises Rented to You (Fire Legal Liability)
 - 31.4.1.2 These limits may be met with any combination of primary Commercial General Liability and Umbrella/Excess Liability limits.
- 31.5 Each Party agrees to accept the other Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:
 - 31.5.1 The Party desiring to satisfy its Workers' Compensation and Employers Liability obligations through self-insurance shall submit to the other Party a copy of its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by the state in which the operations are to be performed or the employer's state of hire.
 - 31.5.2 Provide a copy of the Certificate of Authority annually for the term of this Agreement.
 - 31.5.3 Obtain Workers' Compensation and Employers Liability insurance immediately if the state rescinds the Certificate of Authority. The option to self-insure Workers' Compensation and Employers Liability is specific to WSP and does not extend to subcontractors WSP may hire.
 - 31.5.4 The Party desiring to satisfy its automobile liability obligations through self-insurance shall submit to the other Party a copy of the Certificate of Authority to self-insure Automobile Liability obligations issued by the state in which the operations are to be performed.
 - 31.5.4.1 provide a copy of the Certificate of Authority annually for the term of this Agreement.
 - 31.5.4.2 obtain Automobile Liability insurance immediately if the state rescinds the Certificate of Authority to self-insure Automobile Liability obligations. The option to self-insure Automobile Liability is specific to each party and does not extend to subcontractors each party may hire.
 - 31.5.5 The Party desiring to satisfy its general liability obligations through self-insurance must provide.
 - 31.5.5.1 copy to the other party of it's most recent audited financial statements with an unqualified opinion from the auditor, or
 - 31.5.5.2 provide a current Dun & Bradstreet report with a composite credit appraisal score of "1" or "2", or
 - 31.5.5.3 maintain a long-term unsecured issuer rating of BBB- from Standard & Poors or Baa from Moody's during the term of this Agreement.
 - 31.5.5.4 maintain a net worth of at least ten (10) times the amount of insurance required.
 - 31.5.5.4.1 obtain Commercial General Liability insurance immediately if the party is unable to comply with the financial strength and size requirements in this Section.

31.5.5.4.2 provide this information annually for the term of the Agreement.

31.5.5.5 The party's election to self-insure must be signed by the self-insuring party and countersigned when accepted by the other party. This election and approval must be updated annually. The option to self-insure Commercial General Liability is specific to each party and does not extend to subcontractors each party may hire.

31.6 Each Party agrees to provide the other Party with at least thirty (30) days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.

31.7 This Section 31 is a general statement of insurance requirements and shall be in addition to any specific requirement of insurance referenced elsewhere in this Agreement or a Referenced Instrument.

32. SEVERABILITY

32.1 Except as otherwise provided herein, if any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, the Parties shall negotiate in good faith and diligent efforts to amend this Agreement to replace the unenforceable provision with an enforceable provision that is mutually acceptable and that reflects the intent of the unenforceable provision as closely as possible; provided, however, that failure to reach such mutually acceptable new provisions within ninety (90) days after such rejection or holding shall permit either Party to terminate this Agreement upon 90 days written notice to the other, during which time the Parties shall work cooperatively to establish an orderly transition of CARRIER's customers/End Users to other serving arrangements. In any situation in which the right to terminate under this Section 32.1 is triggered by State government action, the right to terminate shall arise only in the State in which such action occurred and would apply for that State only unless this Agreement otherwise permits a Party to terminate this Agreement in more than one State, including without limitation in its entirety.

33. SURVIVAL

33.1 The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. Without limiting the general applicability of the foregoing, the following sections are specifically agreed by the Parties to continue beyond the termination or expiration of this Agreement: Sections 19 (Effective Date, Term, Expiration and Termination), 10 (Limitation of Liability/Indemnity), 21 (Disclaimer of Warranties), 11 (as to any billing/charges matters hereunder), 12 (as to any disputes hereunder), 13 (Nondisclosure) and 18 (Taxes).

34. AUTHORITY

34.1 Each of the AT&T-13STATE ILEC(s) for which this Agreement is executed represents and warrants that it is a corporation or limited partnership duly organized, validly existing and in good standing under the laws of its state of incorporation or formation. Each of the AT&T-13STATE ILEC(s) for which this Agreement is executed represents and warrants that AT&T Operations, Inc. has full power and authority to execute and deliver this Agreement as agent for that AT&T-13STATE ILEC. Each of the AT&T-13STATE ILEC(s) for which this Agreement is executed represents and warrants that it has full power and authority to perform its obligations hereunder.

34.2 CARRIER represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

34.3 Each individual whose signature appears below represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.

35. COUNTERPARTS

- 35.1 This Agreement may be executed in counterparts. Each counterpart shall be considered an original and such counterparts shall together constitute one and the same instrument.

36. ENTIRE AGREEMENT

- 36.1 AT&T-12STATE only: The rates, terms and condition contained in this Agreement and any Attachments, appendices, exhibits, schedules, and addenda and other documents or instruments referred to herein and incorporated into this Agreement by reference (if any) constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written between the Parties during the negotiations of this Agreement and through the execution and/or Effective Date of this Agreement. This Agreement shall not operate as or constitute a novation of any agreement or contract between the Parties that predates the execution and/or Effective Date of this Agreement.
- 36.2 AT&T CONNECTICUT only: The rates, terms and conditions contained in this Agreement and any Attachments, appendices, exhibits, schedules, Addenda, and commission tariffs and other documents or instruments referred to herein and incorporated into this Agreement by reference constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written between the Parties pre-dating the execution of this Agreement; provided, however, that none of the rates, terms or conditions of this Agreement shall be construed to apply in any manner to any period prior to the termination and/or expiration date of any agreement that this Agreement replaces. This Agreement shall not operate as or constitute a novation of any agreement or contract between the Parties that predates the execution and/or Effective Date of this Agreement.

COMMERCIAL AGREEMENT
Signatures

New Cingular Wireless PCS, LLC

Illinois Bell Telephone Company d/b/a AT&T Illinois,
Indiana Bell Telephone Company Incorporated d/b/a AT&T
Indiana, Michigan Bell Telephone Company d/b/a AT&T
Michigan, The Ohio Bell Telephone Company d/b/a AT&T
Ohio, and Wisconsin Bell, Inc. d/b/a AT&T Wisconsin,
Nevada Bell Telephone Company d/b/a AT&T Nevada,
Pacific Bell Telephone Company d/b/a AT&T California,
The Southern New England Telephone Company d/b/a
AT&T Connecticut, Southwestern Bell Telephone
Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T
Missouri, AT&T Oklahoma and/or AT&T Texas by AT&T
Operations, Inc. its authorized agent

Signature: Michael Van Weelden

Name: Michael Van Weelden

Title: Director of Supply Chain Management

Date: 7/27/07

Signature: Eddie A. Reed Jr.

Name: Eddie A. Reed Jr.

Title: Director-Contract Management

Date: 7.30.07

TRANSIT TRAFFIC SERVICE ATTACHMENT (WIRELESS)

TABLE OF CONTENTS

<u>SECTION</u>	<u>SECTION NUMBER</u>
INTRODUCTION.....	1
DEFINITIONS	2
RESPONSIBILITIES OF THE PARTIES	3
TRANSIT TRAFFIC ROUTING.....	4
TANDEM TRUNKING AND DIRECT TRUNKING REQUIREMENTS	5
TRANSIT TRAFFIC RATE APPLICATION	6
RESERVATION OF RIGHTS/INTERVENING LAW	7

TRANSIT TRAFFIC SERVICE ATTACHMENT (WIRELESS) TO COMMERCIAL AGREEMENT

1. INTRODUCTION

- 1.1 This Transit Traffic Service Attachment (Wireless) ("Attachment") sets forth the rates, terms and conditions of AT&T-13STATE's Transit Traffic Service as a Transit Service Provider. AT&T-13STATE's Transit Traffic Service is provided to other Telecommunications Carriers for Telecommunications traffic that does not originate with (or terminate to) the Transit Service Provider's end user. Transit Traffic Service allows Wireless Service Provider (WSP) to exchange traffic with a Third Party Terminating Carrier to which it is not directly interconnected.
- 1.2 This Attachment incorporates the provisions of a transiting arrangement as it relates to AT&T-13STATE's provision of Transit Traffic Service as a Transit Service Provider to interconnected WSPs that offer telephone exchange service and exchange access, as provided by FCC orders, rules and regulations (i.e., cellular providers, broadband Personal Communications Services (PCS) providers and covered specialized mobile radio (SMR) providers).

2. DEFINITIONS

- 2.1 "800 IntraLATA Toll Traffic" is defined as traffic that originates from WSP's end user that utilizes a dialing sequence that invokes toll-free, 800-like, service processing, that terminates to an end user served by a Third Party Terminating Carrier, whereby the Third Party Terminating Carrier is both the Section 251(b)(5) Traffic Provider and the IntraLATA toll provider (not sent through an IXC or an intermediary). "800 IntraLATA Toll Traffic" includes but is not limited to calls placed to 800, 877, 888, ("8YY") NPA Service Access Codes (SAC).
- 2.2 "Central Office Switch" means a switch, including, but not limited to an End Office Switch and a Tandem Switch.
- 2.3 "Calling Party Number" or "CPN" is as defined in 47 C.F.R. § 64.1600(c) ("CPN").
- 2.4 "End Office" or "End Office Switch" is an AT&T-13STATE switch that directly terminates traffic to and receives traffic from end users of local Exchange Services.
- 2.5 "Exchange Service" means Telephone Exchange Service as defined in the Act.
- 2.6 "ISP-Bound Traffic" is defined as traffic exchanged between WSP's end user and an Internet Service Provider (ISP) served by a Third Party Terminating Carrier that:
 - (i) originates from WSP's end users and terminates to an ISP served by a Third Party Terminating Carrier in the same AT&T-13STATE exchange area; or
 - (ii) originates from WSP's end users and terminates to an ISP served by a Third Party Terminating Carrier within different AT&T-13STATE exchanges or within an AT&T-13STATE exchange, and an independent ILEC exchange, that share a common mandatory local calling area, as defined in AT&T-13STATE's tariff, (e.g., mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other like types of mandatory expanded local calling scopes).
- 2.7 "IntraLATA InterMTA Traffic" is defined as traffic exchanged between WSP's end users and the end users of a LEC Third Party Terminating Carrier which subtends an AT&T-13STATE Tandem, whereby, at the beginning of the call, the Transit Traffic originates in one Major Trading Area ("MTA") and terminates in another MTA, but where the call both originates and terminates within the same LATA. Such IntraLATA InterMTA Traffic must terminate to a Third Party Terminating Carrier's end user, whereby the Third Party Terminating Carrier does not send the Transit Traffic through an IXC or an intermediary.
- 2.8 "Loss" or "Losses" means any and all losses, costs (including court costs), claims, damages (including fines, penalties, or civil judgments and settlements), injuries, liabilities and expenses (including attorneys' fees).

- 2.9 "Section 251(b)(5) Traffic", "Section 251(b)(5) Calls" means completed calls that originate on either Party's network, that terminate on the other Party's network, that are exchanged directly between the Parties and that, at the beginning of the call, originate and terminate within the same MTA. "Section 251(b)(5) Calls" does not refer to calls that originate and terminate within the local calling area of either Party. A call that is originated or terminated by a UNE-P provider is not a call that originates or terminates on either Party's network. In order to measure whether traffic comes within the definition of Section 251(b)(5) Calls, the Parties agree that the origination and termination point of the calls are as follows:
- (a) For AT&T-13STATE, the origination or termination point of a call shall be the End Office Switch that serves, respectively, the calling or called party at the beginning of the call.
 - (b) For WSP, the origination or termination point of a call shall be the Cell Site that serves, respectively, the calling or called party at the beginning of the call.
- 2.10 "Tandem" or "Tandem Switch" is an AT&T-13STATE switch used to connect Trunks between and among other Central Office Switches.
- 2.11 "Third Party Originating Carrier" means a Telecommunications Carrier (i.e., a Competitive Local Exchange Carrier (CLEC), an Incumbent Local Exchange Carrier (ILEC), a Commercial Mobile Radio Service (CMRS) provider or an Out-of-Exchange Local Exchange Carrier (OELEC), but specifically excluding an Interexchange Carrier (IXC)) that originates Transit Traffic that transits AT&T-13STATE's network and is delivered to WSP.
- 2.12 "Third Party Terminating Carrier" means a Telecommunications Carrier to which traffic is terminated when WSP uses AT&T-13STATE's Transit Traffic Service (i.e., a Competitive Local Exchange Carrier (CLEC), an Incumbent Local Exchange Carrier (ILEC), a Commercial Mobile Radio Service (CMRS) provider or an Out-of-Exchange Local Exchange Carrier (OELEC), but specifically excluding an Interexchange Carrier (IXC)).
- 2.13 "Third Party Telecommunications Carrier" means a Telecommunications Carrier as defined in the Act not a party to this agreement.
- 2.14 "Transit Service Provider" means AT&T-13STATE when providing its Transit Traffic Service.
- 2.15 "Transit Traffic" means all Section 251(b)(5) Traffic, ISP-Bound Traffic, IntraLATA InterMTA Traffic, CMRS provider-bound traffic, and/or 800 IntraLATA Toll Traffic delivered via the Transit Traffic Service.
- 2.16 "Transit Traffic Service" is an optional non 251/252 switching and intermediate transport service provided by AT&T-13STATE to WSP where WSP is directly interconnected with an AT&T-13STATE Tandem. AT&T-13STATE neither originates nor terminates Transit Traffic on its network, but acts only as an intermediary. For the purposes of this Attachment, Transit Traffic Service is a service that is limited to Section 251(b)(5) Traffic, CMRS provider-bound traffic, ISP-Bound Traffic, IntraLATA InterMTA Traffic, and 800 IntraLATA Toll Traffic destined to the end users of a Third Party Terminating Carrier and is routed utilizing an AT&T-13STATE Tandem Switch where an AT&T-13STATE end user is neither the originating nor the terminating party. Transit Traffic Service is not available for traffic that: (i) terminates over a Party's circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport) and/or (ii) originates from the end user's premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology.
- 2.17 "Trunk" or "Trunk Group" means the switch port interface(s) and the communication path created to connect WSP's network with AT&T-13STATE's network for the purpose of interconnection pursuant to the Act.

3. RESPONSIBILITIES OF THE PARTIES

- 3.1 AT&T-13STATE will provide WSP with AT&T-13STATE's Transit Traffic Service to all Third Party Terminating Carriers with whom AT&T-13STATE is interconnected, but only in the LATA, or outside of the LATA to the extent a LATA boundary waiver exists.
- 3.2 A Transit Traffic Service rate applies to all Transit Traffic that originates on WSP's network. The Transit Traffic Service rate is only applicable when calls do not originate with (or terminate to) an AT&T-13STATE end user.
- 3.3 The Transit Traffic Service rate applies to all minutes of use ("MOUs") when WSP sends Transit Traffic to a Third Party Terminating Carrier's network. WSP agrees to compensate AT&T-13STATE for the Transit Traffic Service provided at the rate set forth in the attached Transit Traffic Service Appendix Pricing, as applicable.
- 3.4 Each Party to this Agreement will be responsible for the accuracy and quality of its data submitted to the other Party.
- 3.5 The rates that AT&T-13STATE shall charge WSP for the Transit Traffic Service is outlined in Section 6 below and attached Transit Traffic Service Appendix Pricing.

WSP Originated

- 3.6 WSP has the sole obligation to enter into traffic compensation arrangements with Third Party Terminating Carriers prior to delivering Transit Traffic destined for such Third Party Terminating Carriers. In no event will AT&T-13STATE have any liability to WSP or any Third Party if WSP fails to enter into such traffic compensation arrangements. In the event WSP originates Transit Traffic destined for a Third Party Terminating Carrier with which WSP does not have a traffic compensation arrangement, then WSP will indemnify, defend and hold harmless AT&T-13STATE against any and all Losses including, without limitation, charges levied by such Third Party Terminating Carrier. The Third Party Terminating Carrier and AT&T-13STATE will bill their respective charges directly to WSP. AT&T-13STATE will not be required to function as a billing intermediary (e.g. clearinghouse). Under no circumstances will AT&T-13STATE be required to pay any termination charges to the Third Party Terminating Carrier.
- 3.7 In the event WSP originates Transit Traffic destined for a Third Party Terminating Carrier with which WSP does not have a traffic compensation arrangement and a regulatory agency or court orders AT&T-13STATE to pay such Third Party Telecommunications Carrier termination charges for the Transit Traffic AT&T-13STATE has delivered, WSP will indemnify AT&T-13STATE for any charges, costs, expenses or other liability related to such order, including but not limited to termination charges, interest, and any billing and collection costs. In the event of any such proceeding, AT&T-13STATE agrees to allow WSP to participate as a party.
- 3.8 WSP will be responsible for sending the Calling Party Number (CPN) for calls delivered to the network of AT&T-13STATE. WSP shall not strip, alter, modify, add, delete, change, or incorrectly assign or re-assign any CPN. If AT&T-13STATE identifies improper, incorrect, or fraudulent use of local exchange services or identifies stripped, altered, modified, added, deleted, changed, and/or incorrectly assigned CPN, WSP agrees to cooperate to investigate and take corrective action. If WSP is passing CPN but AT&T-13STATE is not properly receiving information, WSP will work cooperatively to correct the problem. If the CPN is not received from the WSP, AT&T-13STATE can not forward the CPN and WSP will indemnify, defend, and hold harmless AT&T-13STATE from any and all Losses arising out of the failure of any traffic transiting AT&T-13STATE's network to have CPN.
- 3.9 WSP, as a Telecommunications Carrier originating traffic, has the sole responsibility of providing appropriate information to identify transiting traffic to Third Party Terminating Carriers. AT&T-12STATE may provide billing information to Third Party Terminating Carriers to assist with the identification of traffic.

WSP terminated

- 3.10 WSP shall not charge AT&T-13STATE when AT&T-13STATE provides Transit Traffic Service as the Transit Service Provider for calls terminated to WSP.

- 3.11 When AT&T-13STATE, operating as a Transit Service Provider, routes Transit Traffic to WSP from a Third Party Originating Carrier, AT&T-13STATE agrees to pass the originating CPN information to WSP as provided by the Third Party Originating Carrier.
- 3.12 The Third Party Originating Carrier is responsible for sending the CPN for calls originating on its network and passed to the network of WSP from AT&T-13STATE serving as the Transit Service Provider. Where AT&T-13STATE is providing a Transit Traffic Service, AT&T-13STATE will pass the Calling Party Number (CPN), if it is received from a Third Party Originating Carrier. If the CPN is not received from the Third Party Originating Carrier, AT&T-13STATE can not forward the CPN; therefore, WSP will indemnify, defend and hold harmless AT&T-13STATE from any resultant Losses. If AT&T-13STATE or WSP identifies stripped, altered, modified, added, deleted, changed, and/or incorrectly assigned CPN from Third Party Originating Carrier, WSP agrees to cooperate to work with Third Party Originating Carrier to investigate and take corrective action. If Third Party Originating Carrier is passing CPN but AT&T-13STATE or WSP is not properly receiving information, WSP will work cooperatively to correct the problem.
- 3.13 WSP agrees to seek terminating compensation directly from the Third Party Originating Carrier. AT&T-13STATE, as the Transit Service Provider, will not be obligated to pay for Transit Traffic as the default originator.

4. TRANSIT TRAFFIC ROUTING

- 4.1 In each LATA in which WSP has one or more MSCs and desires to exchange Transit Traffic through AT&T-13STATE, WSP shall trunk from each of its MSCs to all AT&T-13STATE Tandems in such LATA; or, in the event WSP has no MSC in a LATA in which it desires to exchange Transit Traffic through AT&T-13STATE, WSP shall establish one or more POIs within such LATA and trunk from each of its POIs to all AT&T-13STATE Tandems in such LATA.
- 4.2 WSP shall route Transit Traffic destined to any Third Party Terminating Carrier to the appropriate AT&T-13STATE Tandem Switch that is subtended by such Third Party Terminating Carrier's switch.
- 4.3 Transit Traffic not routed to the appropriate AT&T-13STATE Tandem shall be considered misrouted. Transit Traffic routed at or through any AT&T-13STATE End Office Switch shall be considered misrouted.
- 4.4 Upon written notification from AT&T-13STATE of misrouting of Transit Traffic by WSP as identified above, WSP will take appropriate action and correct such misrouting within a reasonably practical period of time no longer than 60 days after receipt of notification of such misrouting.
- 4.5 Facilities and trunking pursuant to WSP's Interconnection Agreement, referenced in Interconnection Trunking Requirements (Appendix ITR) to the Interconnection Agreement, or as otherwise mutually agreed in writing, will be utilized for the routing of Transit Traffic.

5. TANDEM TRUNKING AND DIRECT TRUNKING REQUIREMENTS

- 5.1 When Transit Traffic between WSP and a Third Party Terminating Carrier (i.e., CLEC, ILEC, CMRS provider or OELEC) through an AT&T-13STATE Tandem requires twenty-four (24) or more Trunks, upon AT&T-13STATE's written request, WSP shall establish a direct Trunk Group or alternate transit arrangement between itself and such Third Party Terminating Carrier within sixty (60) calendar days. WSP shall route Transit Traffic via AT&T-13STATE's Tandem Switches, and not at or through any AT&T-13STATE End Offices. Once this Trunk Group has been established, WSP agrees to cease routing Transit Traffic through the AT&T-13STATE Tandem as provided above, to the Third Party Terminating Carrier, unless the Parties mutually agree otherwise.

6. TRANSIT TRAFFIC RATE APPLICATION

- 6.1 The Transit Traffic Services rate applies to all Minutes of Use ("MOUs") when WSP sends Transit Traffic to a Third Party Terminating Carrier's network through AT&T-13STATE's tandem switch where an AT&T-13STATE end user is neither the originating nor the terminating party. WSP agrees to compensate

AT&T-13STATE operating as the Transit Service Provider at the applicable rates set forth in Transit Traffic Service Appendix Pricing.

7. RESERVATION OF RIGHTS/INTERVENING LAW

- 7.1 In entering into this Agreement, this Attachment, and any Amendments to such Agreement and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s). If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement, and/or this Attachment and/or otherwise affects the rights or obligations of either Party that are addressed by this Agreement or this Attachment, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement or this Attachment. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.
- 7.2 In entering into this Agreement and this Attachment, each Party agrees to abide by and honor the rates, terms, conditions set forth in this Agreement and this Attachment without challenging its provisions throughout the Term of this Agreement.

TRANSIT TRAFFIC SERVICE APPENDIX PRICING

1. Tiered pricing for Transit Service will be determined by the traffic volumes for transit traffic aggregated on an annual basis for 21 states including:

California
Nevada
Missouri
Oklahoma
Kansas
Arkansas
Texas
Michigan
Wisconsin
Ohio
Illinois
Indiana
Florida
Georgia
North Carolina
South Carolina
Tennessee
Kentucky
Mississippi
Louisiana
Alabama

*California Call Set Up charge 0.000629 applies in addition to the duration (MOU) rate included below as "Rates".

2. The Transit Service Rates will be as follows:

MOU Quantity	< 20B MOUs	20 – 35B MOUs	> 35B MOUs
Rates per MOU	0.0034	0.00225	0.0020

3. Pursuant to this Agreement, AT&T will bill and New Cingular Wireless PCS, LLC will pay the rate of 0.00225 for transit services, except for transit services in Connecticut (the Connecticut rates are set forth in Section 4, below). One year from the Effective Date of the Agreement, the aggregate number of transit MOUs for the 21 states listed above will be determined in order to apply the MOU Quantity Rate. If the aggregate number of transit MOUs for the 21 states is less than 20 Billion MOUs, then the 0.0034 rate will apply to the MOUs for the states that are subject to this Agreement, excluding Connecticut, ("True-Up States") and AT&T will bill and New Cingular Wireless PCS, LLC will pay a true up amount calculated as $(.0034 - .00225) \times$ the total transit MOUs for the True-Up states. If the aggregate number of transit MOUs is greater than 35 Billion MOUs for the 21 states, then the 0.002 rate will apply to the transit MOUs for the True-Up States and AT&T will true up the amount calculated as $(.00225 - .0020) \times$ the total transit MOUs for the True-Up States and apply a credit adjustment on a per BAN per state basis, unless mutually agreed otherwise. A true up will be calculated each year thereafter on the anniversary date of the last true-up.
4. Connecticut Transit Service MOUs and rates are not included in the tiered pricing included above. Transit Service MOUs in Connecticut will be calculated and billed as follows:

Transit Traffic Factor

- 4.1 The Parties have agreed upon a Transit Traffic factor of 1%, which represents the percentage of total Conversation MOUs which will be considered as transiting minutes ("Transiting Minutes") when either Party is unable to identify such Transit Traffic. The Parties have agreed to use the factor developed as a reasonable representation of traffic which transits AT&T-Connecticut's network.
- 4.2 Transit Traffic Charges: The usage rate for transit traffic in Connecticut shall be \$0.002059 and billed per MOU calculated as Transiting Minutes in section 4.1 above.
5. New Cingular Wireless PCS, LLC agrees to use AT&T (ILEC) as its primary transit provider throughout the 13 state region.
6. New Cingular Wireless PCS, LLC agrees that the transit rates set forth in this Service Pricing Appendix have been established pursuant to negotiation and have been voluntarily agreed to between the Parties.